

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUE M. SHURTLEFF,

Plaintiff,

v.

OLIVE GARDEN,

Defendant.

Civil Action No. 14-10920-LTS

ORDER ON DEFENDANT'S MOTION TO DISMISS

May 21, 2015

SOROKIN, J.

Defendant moves to dismiss asserting (a) Plaintiff did not effect service on a proper agent of the corporation and (b) Plaintiff failed to effect service within the 120 day period provided. The Motion to Dismiss is ALLOWED as to the first ground, as the manager of the local Olive Garden restaurant is not a proper agent for service on GMRI, Inc., because he is not a corporate officer, managing or general agent, or agent otherwise authorized to accept service for GMRI, Inc. See Fed. R. Civ. P. 4(h) (service on a corporation), (e)(1) (allowing service under state law); Mass. R. Civ. P. 4(d)(2) (service closely mirroring federal rule); McLarnon v. Deutsche Bank Nat'l Trust Co., No. 13-12815-FDS, 2014 WL 793570, at *7 (D. Mass. Feb. 25, 2014) (finding delivery of summons to defendant law group's law offices insufficient).

Regarding the second ground, the record reveals that Plaintiff made an effort, albeit unsuccessful, to identify the proper corporate defendant via the Secretary of State's website and delivered the service papers to the United States Marshals before, though not much before, the

expiration of the 120 day period. In these circumstances, the Court finds good cause to permit Plaintiff a further period to effect service on GMRI, Inc.

Therefore, unless otherwise ordered by this Court, within 30 days from the date of this Order, Plaintiff either shall effect proper service on the defendant or obtain a waiver of service pursuant to Fed. R. Civ. P. 4(d). The Clerk shall issue a new summons along with the USM 285 forms and standard instructions for service. If directed by Plaintiff to do so, the United States Marshal Service shall effect service and advance the costs of service. Plaintiff is advised that no further extensions of time to effect service will be permitted.

SO ORDERED.

/s/ Leo T. Sorokin
Leo T. Sorokin
United States District Judge